

This Opinion is Not a
Precedent of the TTAB

Mailed: September 8, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Belgravia Wood Limited

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Serial No. 90640925

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Austin Padgett, Esq., of Troutman Pepper Hamilton Sanders LLP,
for Belgravia Wood Limited.

Christopher Buongiorno, Trademark Examining Attorney, Law Office 102,
Mitchell Front, Managing Attorney.

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Before Pologeorgis, Allard, and Casagrande,
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

Belgravia Wood Limited (“Applicant”) seeks registration on the Principal Register of the mark HOLIDAZZLE (in standard characters) for goods in International Class 11 identified as “Electric lights for Christmas trees; Christmas lighting, namely, electric holiday lights; electric holiday lights.”¹

¹ Application Serial No. 90640925 was filed on April 13, 2021, based upon an allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of consumer confusion with the standard character mark DAZZLE registered on the Principal Register, covering "LED (light emitting diode) lighting fixtures; LED (light emitting diodes) lighting fixtures for use in display, commercial, industrial, residential, and architectural accent lighting applications; LED and HID light fixtures; LED light strips for decorative purposes" in International Class 11.²

After the Examining Attorney entered a final refusal,³ Applicant simultaneously appealed⁴ and requested that the Examining Attorney reconsider.⁵ The Board suspended the appeal because of the request for reconsideration.⁶ After the

² See June 2, 2022, Nonfinal Office Action, at TSDR 7-9 (appending registration). Registration No. 4849036 (the '036 Registration), issued on November 10, 2015, Section 8 & 15 declarations accepted.

Citations in this opinion to the application record, including the request for reconsideration and its denial, are to pages in the Trademark Status and Document Retrieval ("TSDR") database of the United States Patent and Trademark Office ("USPTO"). Any specific page numbers cited will correspond to the .pdf-format downloaded version of such documents.

³ June 21, 2022, Final Office Action.

⁴ December 21, 2022, Notice of Appeal, at 1 TTABVUE. Citations in this opinion to filings in proceedings before the Board are to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry, as paginated by TTABVUE, where any specifically cited portions of the document appear.

⁵ December 21, 2022, Request for Reconsideration.

⁶ 2 TTABVUE.

Examining Attorney denied the request for reconsideration,⁷ the appeal resumed.⁸ The appeal is fully briefed.⁹ We now affirm the refusal to register.

I. Likelihood of Confusion and the *du Pont* Factors

Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), prohibits registration of a mark that “so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive.” To determine whether a likelihood of confusion exists, we evaluate the factors listed in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See, e.g., In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at *2 (Fed. Cir. 2023). In *Charger Ventures*, our primary reviewing court explained:

In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the analysis. The Board is required to consider each factor for which it has evidence, but it can focus its analysis on dispositive factors. A single *DuPont* factor may, for example, be dispositive of the likelihood of confusion analysis. The weight given to each factor depends on the circumstances of each case.

Id. at *4 (citations omitted). We consider each *du Pont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortgage Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). We weigh together the findings we have made on the relevant *du Pont* factors to determine if, on balance, they indicate that

⁷ Oct. 19, 2022, Denial of Request for Reconsideration.

⁸ 5 TTABVUE.

⁹ *See* 6 TTABVUE (Applicant’s brief); 8 TTABVUE (Examining Attorney’s brief); 9 TTABVUE (Applicant’s reply).

confusion is likely. *See, e.g., Charger Ventures*, 2023 USPQ2d 451, at *7; *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1207 (Fed. Cir. 2003). In most cases, the comparison of the marks and goods are key factors. *See, e.g., Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1244 (TTAB 2010).

The Examining Attorney's refusal here is based on several of the *du Pont* factors: the similarity of the marks; the relatedness of the goods; and the lack of any differences in the trade channels and classes of customers.¹⁰ Applicant, for its part, focuses its argument on the alleged dissimilarities in the mark but also argues that the sixth *du Pont* factor favors it. We now address the implicated factors, beginning with the factors that the Examining Attorney addresses but Applicant does not.

A. Comparison of the Identified Goods

The second *du Pont* factor concerns the degree of similarity or dissimilarity between the goods at issue. *See du Pont*, 177 USPQ at 567. In making our determination regarding the relatedness of the goods, we must look to the goods as identified in Applicant's application and the '036 Registration. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017) ("Likelihood of confusion 'must be resolved on the basis of the goods named in the

¹⁰ 8 TTABVUE 3-11.

registration and, in the absence of specific limitations in the registration, on the basis of all normal and usual channels of trade and methods of distribution.”) (citations omitted). “The marks need not be used on directly competing goods, any relation likely to lead purchasers into assuming a common source being sufficient.” *Dan Robbins & Assocs., Inc. v. Questor Corp.*, 599 F.2d 1009, 1013, 202 USPQ 100, 104 (CCPA 1979) (citation omitted). “[T]he relevant inquiry considers if the respective products are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.” *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 2022 USPQ2d 513, at *8 (Fed. Cir. 2022) (cleaned up; citation omitted).

Here, we find that the goods identified in Applicant’s application and the ’036 Registration overlap, at least in part. The registration broadly identifies LED lighting fixtures and LED lighting strips for decorative purposes. The application identifies electric holiday lights. Electric holiday lights are for decoration, and, as generally identified in the application, they encompass a decorative LED lighting strip. In addition, the Examining Attorney placed in the record webpages of several companies that offer LED holiday lights. *See, e.g.*, “twinkly”-brand LED Christmas lights¹¹; “Christmas Lights Etc”-brand LED Christmas tree lights¹²; “Christmas light source”-brand LED Christmas lights and LED rope light spool’s “for Santa’s sleigh”¹³;

¹¹ June 21, 2022, Final Office Action at TSDR 5-9.

¹² *Id.* at TSDR 11-12.

¹³ *Id.* at TSDR 13-14.

“LumaBase”-brand LED snowflake string lights¹⁴; “Christmas Central”-brand LED Christmas tree lights¹⁵; “AQLighting”-brand LED Christmas lights¹⁶; “1000Bulbs.com”-brand LED Christmas lights;¹⁷ GE “StayBrite”-branded and “Random Sparkle”-brand holiday LED lights¹⁸; and Westinghouse-brand (LED holiday lights).¹⁹ Some companies sold both Christmas/holiday lights and other LED light fixtures or strips: Yard Envy²⁰; Birddog Lighting²¹; and Philips.²²

The Examining Attorney also placed in the record fourteen (14) registrations each covering goods from both the application and the ’036 Registration.²³

Where the evidence shows that other companies sell the goods listed in both the application and registration at issue or goods that simultaneously fall within both identifications, that is evidence that consumers will see the goods as related. *See, e.g., Detroit Athletic*, 128 USPQ2d at 1051; *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002).

The evidence of record in this case amply shows that the goods in the application and in the ’036 Registration are legally identical, in that they overlap in part, and

¹⁴ *Id.* at TSDR 15.

¹⁵ *Id.* at TSDR 17.

¹⁶ *Id.* at TSDR 24-25.

¹⁷ *Id.* at TSDR 29.

¹⁸ December 23, 2022, Denial of Reconsideration at TSDR 6-7.

¹⁹ *Id.* at TSDR 41.

²⁰ June 21, 2022, Final Office Action at TSDR 21-22.

²¹ *Id.* at TSDR 26-27.

²² December 23, 2022, Denial of Reconsideration at TSDR 28-31.

²³ *See* December 10, 2021, Nonfinal Office Action at TSDR 9-48.

otherwise are very closely related. *See, e.g., Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014) (parties' services that overlapped in part and otherwise were closely related considered "legally identical"); *In re Hitachi High-Techs. Corp.*, 109 USPQ2d 1769, 1772 (TTAB 2014) (where goods "overlap in part," they are "legally identical"). This factor favors a conclusion that confusion is likely.

B. Comparison of the Channels of Trade and Classes of Customers

The third *du Pont* factor considers "[t]he similarity or dissimilarity of established, likely-to-continue trade channels." *du Pont*, 177 USPQ at 567. This factor, like the comparison of the goods, looks to what is disclosed in the application and registration. *See, e.g., Detroit Athletic*, 128 USPQ2d at 1052. Here, neither the application nor the '036 Registration contains any limitation on trade channels. This lack of restrictions means that we presume that the goods in both are available in all the normal trade channels for such goods. *See, e.g., Kangol Ltd. v. Kangaroos U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945, 1946 (Fed. Cir. 1992); *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983). Moreover, as here, the goods recited in the application and registration are at least in part legally identical, there is a presumption that the channels of trade and classes of purchasers are the same. *See, e.g., Stone Lion*, 110 USPQ2d at 1161-62; *Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Hitachi*, 109 USPQ2d at 1772-73. Though more proof is not needed because Applicant does not contest this point, there is also evidence showing that several companies offer goods within both the

application and registration directly to the public via either their own or third-party online retail websites.

The fourth *du Pont* factor considers “[t]he conditions under which and buyers to whom sales are made. i.e. ‘impulse’ vs. careful, sophisticated purchasing.” *du Pont*, 177 USPQ at 567. As just noted, due to the fact that the goods identified in Applicant’s application and the ’036 Registration are legally identical in part, we presume that “the buyers to whom sales are made” comprise the same classes of buyers. *See, e.g., Stone Lion*, 110 USPQ2d at 1161-62; *Citigroup*, 98 USPQ2d at 1261; *Hitachi High-Techs.*, 109 USPQ2d at 1772-73. Moreover, the nature of the goods themselves (ordinary consumer goods) and the evidence that many third parties who sell these goods do so through ordinary Internet retail websites available to anyone indicates that the classes of customers for these products do, in fact, overlap. As noted earlier, Applicant does not make any argument or offer any evidence to counter this presumption.²⁴ These *du Pont* factors favor a conclusion that confusion is likely.

C. Comparison of the Marks

We now reach the factor that Applicant chiefly contests. The first *du Pont* factor concerns “[t]he similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *du Pont*, 177 USPQ at 567. This is a “predominant inquiry” in the likelihood of confusion determination. *See*,

²⁴ Although the fourth *du Pont* factor looks not only at who the relevant respective consumers are but how much care and sophistication they bring to bear in selecting the goods or services in question, neither the Examining Attorney nor Applicant address this aspect of the fourth factor. We therefore will not consider it.

e.g., *Herbko Int'l*, 64 USPQ2d at 1380. It “requires consideration of the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *i.am.symbolic*, 123 USPQ2d at 1748 (cleaned up; citations omitted). We bear in mind that “marks must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (cleaned up; citation omitted). The reference to “fallibility of memory” reflects the reality that, when encountering an Applicant’s mark, the consuming public perceives it against the backdrop of “their past recollection of marks to which they were previously exposed.” *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (citation omitted).

“Exact identity is not necessary to generate confusion as to source of similarly-marked products.” *Bridgestone Ams. Tire Ops., LLC v. Fed. Corp.*, 673 F.3d 1330, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012) (citation omitted); *Phillips Petroleum Co. v. Knox Indus. Corp.*, 277 F.2d 945, 125 USPQ 576, 577 (CCPA 1960) (“This issue is whether the marks are confusingly similar, not whether they are identical.”) (citation omitted). The similarity-of-marks inquiry is usually a matter of degree. *See, e.g., St. Helena Hosp.*, 113 USPQ2d at 1085 (“Similarity is not a binary factor but is a matter of degree.”) (citation omitted); *Phillips Petroleum*, 125 USPQ at 577 (“The question of similarity is ordinarily one of degree.”). Where, as here, the goods are legally identical in part and otherwise closely related, the degree of similarity needed to result in likely confusion declines. *See, e.g., Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d

1797, 1801 (Fed. Cir. 2018) (“[W]here ... the goods at issue are identical, the degree of similarity necessary to support a conclusion of likely confusion declines.”) (citation omitted); *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 01 USPQ2d 1713, 1721 (Fed. Cir. 2012) (“[I]f the parties’ goods are closely related, a lesser degree of similarity between the marks may be sufficient to give rise to a likelihood of confusion.”) (citations omitted).

The issue framed, we turn to the marks. Applicant emphasizes that we must not “dissect” the components that may make up a mark, but rather must assess the marks in their entirety.²⁵ We agree with this statement of the law. But we note that “it is often helpful ... to analyze marks by separating them into their component words or design elements in order to ascertain which aspects are more or less dominant” in creating a mark’s commercial impression, so long as the ultimate determination of similarity is assessed as to the marks in their entirety. *Opryland USA Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1473 (Fed. Cir. 1992); *see also QuikTrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 2021 USPQ2d 35, at *2-3 (Fed. Cir. 2021) (“It is not improper for the Board to determine that, for rational reasons, it should give more or less weight to a particular feature of the mark provided that its ultimate conclusion regarding the likelihood of confusion rests on a consideration of the marks in their entirety.”) (cleaned up; citation omitted); *accord Detroit Athletic*, 128 USPQ2d at 1050.

²⁵ See 6 TTABVUE 5-7.

Here, the '036 Registration is for the mark DAZZLE. “Dazzle” is a common word, one definition of which is “to shine brilliantly.”²⁶ As Applicant noted in prosecution,²⁷ that definition has particular relevance in the context of the goods here (e.g., lights and light strips).

Applicant argues that HOLIDAZZLE “is a coined term with no defined meaning”²⁸ and is “a play on the familiar word ‘holiday’”²⁹—a word which also has relevance in the context of Applicant’s goods (e.g., electric holiday lights).

The Examining Attorney argues that consumers viewing Applicant’s mark HOLIDAZZLE in the context of Applicant’s goods will notice the common word “DAZZLE”—which is the entirety of the registered mark—in the coined term HOLIDAZZLE.³⁰ We agree. In contrast to DAZZLE, HOLI and HOLIDAZZLE are not defined words. While adding the prefix HOLI- to DAZZLE may indeed create a coined term, we find that, in the context of Applicant’s holiday lights, consumers will recognize the “play on the word ‘holiday’” that Applicant intended. That play is to substitute the ending -DAZZLE—a common word with relevance to light products—for the ending -DAY in “holiday,” another common word. Thus, we find that that there is a strong similarity in the marks because the recognizable word DAZZLE, which has relevance in this context, is a root element of Applicant’s mark HOLIDAZZLE.

²⁶ June 10, 2022, Response of Nonfinal Office Action, at TSDR 22.

²⁷ See December 12, 2022, Request for Reconsideration at TSDR 59.

²⁸ 6 TTABVUE 3.

²⁹ *Id.* at 7-8.

³⁰ See 8 TTABVUE 3.

In *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002), the Federal Circuit, our primary reviewing court, confronted a similar situation. There, the goods were audio products, one of the prior registered marks was WAVE, and the applicant's mark was POWERWAVE. The Federal Circuit explained:

The presence of the root element WAVE, upon this court's review, introduces a strong similarity in all three marks. Whatever additional distinction may be introduced by the element of POWER in the QSC POWERWAVE mark is severely limited by the fact that the mark is applied to acoustic equipment, namely amplifiers. For this reason, the overall commercial impression engendered by the use of the POWERWAVE mark also carries a strong connotation of sound waves, corresponding to the Board's findings with respect to ACOUSTIC WAVE and WAVE. Any examination of the record before the Board reveals that the "wave" portion of the Bose marks refers to sound and the unique way in which it is manipulated in the Bose products to produce the end product, sound. "Wave" thus has meaning

63 USPQ2d at 1311. The Federal Circuit further noted that:

The Board itself, other courts and this court have been confronted frequently with situations similar to this one, in which a competing mark shares a core portion of senior marks, and in which the competing mark was found too similar to the other mark to earn mark status for itself. Typical of the marks found similar in sound and connotation are AQUA-CARE and WATER-CARE, BEER NUTS and BREW NUTS, BLUE SHIELD and RED SHIELD, GENTLE TOUCH and KIND TOUCH, MANPOWER and WOMANPOWER, DOWNTOWNER and UPTOWNER, WEED EATER and LEAF EATER, THERMO KING and ZERO KING.

Id. (citation omitted); *see also Dap, Inc. v. Canfor Ltd.*, 182 USPQ 626, 628 (TTAB 1974) (HI-DAP and DAP confusingly similar); *Signal Cos. v. S.W. Petroleum Corp.*,

181 USPQ 599, 601 (TTAB 1973) (word SIGNAL is “readily recognizable” in POLISIGNAL); *In re Ayrodev Processes Ltd.*, 179 USPQ 639 (TTAB 1973) (MEGGABOOST similar to BOOST); *Caterpillar Tractor Co. v. Gehl Co.*, 177 USPQ 343, 344-45 (TTAB 1973) (HYDRA-CAT and CAT confusingly similar); *Unimed, Inc. v. Warner-Lambert Pharm. Co.*, 151 USPQ 434, 434-35 (TTAB 1966) (URALGIC and ALGIC confusingly similar).

Applicant urges that this case is more like *Oakville Hills Cellar, Inc. v. Georgallis Holdings, LLC*, 826 F.3d 1376, 119 USPQ2d 1286 (Fed. Cir. 2016).³¹ There, the opposer asserted its registration for the mark MAYA for wine against an applicant who applied to register the mark MAYARI for wine. The Federal Circuit held that American consumers would recognize MAYA as a reference to Mayan culture. 119 USPQ2d at 1289. But the Court also found that adding -RI to the end of MAYA made the marks dissimilar enough to avoid likely confusion because “[t]he letters RI, alone, have no relevant meaning, providing no reason for a customer to view the mark logically as MAYA plus RI, rather than as a single unitary expression.” *Id.* (quoting the Board). In addition, there was a related issue whether consumers would understand and pronounce MAYARI as MAYA-RI, MAY-ARI, or MA-YARI. *Id.* Here, by contrast, there is no mistaking the visual prominence of the term DAZZLE in HOLIDAZZLE, particularly in the context of the term’s relevance to light products. Applicant does not argue that DAZZLE in HOLIDAZZLE will be pronounced any way other than DAZZLE standing alone. Applicant also emphasizes that the added HOLI-

³¹ See 6 TTABVUE 8-9.

prefix is a play on the word “holiday,” whereas the suffix -RI had no meaning. Our primary reviewing court has long cautioned that each trademark case is different. As it said bluntly in *Curtice-Burns, Inc. v. Nw. Sanitation Prods., Inc.*, 530 F.2d 1396, 189 USPQ 138 (CCPA 1976):

As we shall evidently have to continue saying *ad nauseam*: prior decisions on other marks for other goods are of very little help one way or the other in cases of this type. Each case must be decided on its own facts and the differences are often subtle ones.

Id. (cleaned up; citation omitted). But even if we were inclined to identify the prior precedent with the closest facts and simply follow it—which *Curtice-Burns* and myriad other precedents counsel us not to do—we think the previously discussed decision in *Bose Corp.*, 63 USPQ2d 1303, is closer to this case than *Oakville Hills Cellar*.

Applicant also cites *Castle & Cooke, Inc. v. Oulevay, S.A.*, 370 F.2d 359, 152 USPQ 115 (CCPA 1967). There, the Court affirmed the Board’s finding that FARANDOLE “is an arbitrary and unitary term [for biscuits, wafers and pastries], and while it may include [opposer’s DOLE mark for frozen and canned fruit products] as a portion thereof, such term is so merged into applicant’s mark that it loses its individual identity therein; and the marks of the parties, when viewed in their entirety, do not look alike or sound alike.” 152 USPQ at 115.³² Here, by contrast, we find that consumers previously exposed to the registered mark DAZZLE for LED lighting products and viewing Applicant’s HOLIDAZZLE for holiday lights through the

³² See 6 TTABVUE 9.

“fallibility of memory” are likely to perceive HOLIDAZZLE as a variant of the Registrant’s DAZZLE mark used to denominate LED holiday lighting products. This is not, as Applicant urges, an improper “dissection” of its mark, but rather a reflection that, in the context of the goods here, nothing in Applicant’s whole mark HOLIDAZZLE prevents or distracts consumers from spotting and recognizing the word DAZZLE—i.e., the entire cited registered mark—in Applicant’s mark HOLIDAZZLE. In other words, in Applicant’s mark, the term DAZZLE “pops.” Notwithstanding the differences between them, we therefore find the marks similar. This important factor thus supports a conclusion that confusion is likely.

D. The Number and Nature of Similar Marks in Use on Similar Goods

The sixth *du Pont* factor considers “[t]he number and nature of similar marks in use on similar goods.” 177 USPQ at 567. While *du Pont* phrases the inquiry in terms of third-party “use,” it is well settled that third-party registrations by themselves may be relevant under this factor to show that a cited registration is conceptually weak. *See, e.g., Institut Nat’l des Appellations d’Origine v. Vintners Int’l Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992) (“third party registrations show the sense in which the word is used in ordinary parlance and may show that a particular term has descriptive significance as applied to certain goods or services”) (citations omitted); *Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 223 USPQ 1281, 1285 (Fed. Cir. 1984) (same).

Applicant points to registrations it placed in the record for the marks SUNDAZZLER, TREE DAZZLER, DAZLINLI, DAZZLAND, and DAZLEDS, arguing

that the mark DAZZLE is “not a strong source identifier when used in connection with lighting products because the word inherently relates to emitted light.”³³ The Examining Attorney argues that none of these third-party registrations is for the term DAZZLE and therefore do little, if anything, to show that DAZZLE is inherently weak.³⁴ While it is true that none include the exact term DAZZLE that Applicant uses in part of its mark,³⁵ we see another issue. Because the ’036 Registration issued on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), the mark DAZZLE is presumed to be inherently distinctive for listed goods. Trademark Act Section 7(b), 15 U.S.C. § 1057(b); *see also Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 17 F.4th 129, 2021 USPQ2d 1069, at *12 (Fed. Cir. 2021); *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006) (a “mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods”). Moreover, as we noted early in this opinion, the USPTO has accepted the Registrant’s declaration of incontestability under Section 15, 15 U.S.C. § 1065.³⁶ That renders the presumption

³³ See 6 TTABVUE 9.

³⁴ See 8 TTABVUE 6.

³⁵ To be probative, third-party registrations generally must be as close to the mark in the cited registration as the applicant’s mark, *see, e.g., Specialty Brands*, 223 USPQ at 1284-85; *Palisades Pageants, Inc. v. Miss Am. Pageant*, 442 F.2d 1385, 169 USPQ 790, 793 (CCPA 1971), and they also must be so numerous as to be considered “ubiquitous” or amount to a “considerable number,” *see, e.g., i.am.symbolic*, 123 USPQ2d at 1751-52.

³⁶ See *supra* n.2.

that the mark DAZZLE in the '036 Registration is inherently distinctive conclusive, so DAZZLE cannot be challenged as being “merely descriptive.” *See, e.g., Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 330 (1985); *Sunrise Jewelry Mfg. Corp. v. Fred S.A.*, 175 F.3d 1322, 50 USPQ2d 1532, 1534 (Fed. Cir. 1999).

With a mere descriptiveness argument out of the picture, Applicant can argue only that these third-party registrations show that DAZZLE is suggestive in connection with lighting products. But that argument does nothing to advance Applicant's position. We do not need third-party registrations to act as a dictionary definition of DAZZLE because there already is an actual dictionary definition of DAZZLE in the record. That definition makes it clear that DAZZLE is suggestive when used in connection with the lighting products at issue in this case.

Even suggestive registered marks, however, are entitled to protection from later attempts to register marks so similar that confusion is likely to result. *See, e.g., Charger Ventures*, 2023 USPQ2d 451, at *6 (citing *Conde Nast Publ'ns, Inc. v. Miss Quality, Inc.*, 507 F.2d 1404, 184 USPQ 422, 424 (CCPA 1975)). Thus, while the registered mark's suggestiveness has some limited weight here against a finding that confusion is likely, we believe, as explained in the next section, that the other factors on which we have made findings far outweigh this sixth *du Pont* factor.

II. Weighing all the relevant *du Pont* factors together

Having made findings on all the relevant *du Pont* factors, our final step is to assess these findings together to determine if, on balance, confusion is likely. *See, e.g.,*

Charger Ventures, 2023 USPQ2d 451, at *7. Here, the first four *du Pont* factors—the overall similarity of the marks, the in-part overlapping goods, trade channels, and classes of consumers—are highly salient factors that collectively weigh heavily in favor of a conclusion that confusion is likely. We agree that, under the sixth *du Pont* factor, DAZZLE is suggestive, but this modest degree of conceptual weakness comes nowhere close to outweighing these other factors, which all strongly indicate that confusion is likely.

Decision: We affirm the refusal to register Applicant’s mark under Section 2(d) of the Trademark Act.